

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

MATTHEW HODJERA and SYLVIA
HODJERA,

Plaintiffs,

V.

BASF CATALYSTS LLC, *et al.*,

Defendants.

Case No. C17-48RSL

ORDER GRANTING DEFENDANT
VOLKSWAGEN
AKTIENGESELLSCHAFT'S
MOTION TO DISMISS FOR LACK
OF PERSONAL JURISDICTION

This matter comes before the Court on defendant Volkswagen Aktiengesellschaft’s motion to dismiss for lack of personal jurisdiction. Dkt. # 63. Plaintiffs Matthew and Sylvia Hodjera, a married couple, allege that Mr. Hodjera’s mesothelioma was proximately caused by various corporate defendants’ manufacture, sale, and/or distribution of asbestos-containing products. Defendant Volkswagen Aktiengesellschaft (“VWAG”) moves to dismiss, arguing that this Court lacks personal jurisdiction over it. Having reviewed the memoranda, declarations, and exhibits submitted by the parties, the Court grants the motion for the reasons that follow.¹

¹ The Court concludes that this matter is suitable for resolution without oral argument. Accordingly, VWAG's request for argument, Dkt. ## 63, 96, and plaintiffs' request for argument, Dkt. # 87, are denied.

ORDER GRANTING DEFENDANT VOLKSWAGEN
AKTIENGESELLSCHAFT'S MOTION TO DISMISS - 1

I. BACKGROUND

According to the complaint, Mr. Hodjera was exposed to asbestos or asbestos-containing products in Toronto, Ontario, between 1986 and 1994. Dkt. # 1-1 at 4. On May 20, 2016, Mr. Hodjera was diagnosed with mesothelioma. *Id.*

On December 2, 2016, plaintiffs filed suit in King County Superior Court, alleging that Mr. Hodjera's mesothelioma had been proximately caused by the manufacture, sale, and/or distribution of asbestos-containing products by the following defendants: BASF Catalysts LLC; BorgWarner Morse Tec Inc.; Central Precision Limited; Charles B. Chrystal Company, Inc.; Dana Companies, LLC; Dana Canada Corp.; DAP Products, Inc.; Felt Products Mfg. Co.; Honeywell International Inc.; Imerys Talc America, Inc.; Johnson & Johnson; Johnson & Johnson Consumer Companies, Inc.; Pneumo Abex LLC; Union Carbide Corporation; Vanderbilt Minerals LLC; Volkswagen Aktiengesellschaft; Volkswagen Group of Canada; Volkswagen Group of America, Inc.; Whittaker, Clark & Daniels, Inc.; and Does 1–350, inclusive. Dkt. # 1-1 at 2–3. On January 11, 2017, defendant Volkswagen Group of America, Inc. removed the case. Dkt. # 1. Various motions to dismiss are now pending before the Court.

II. DISCUSSION

VWAG argues that the complaint fails to allege facts supporting personal jurisdiction over it. VWAG is a publically quoted stock corporation organized under the laws of Germany. Dkt. # 64, ¶ 3. Its principal place of business is located in Wolfsburg, Germany. Id., ¶ 5. VWAG designs and manufactures Volkswagen motor vehicles. Id., ¶ 4. VWAG does not conduct business in Washington state: it has no offices, plants, distribution or services centers, or any other facilities here. Id., ¶ 6. VWAG does not have any employees or sales representatives in Washington; it does not own or lease any real property in Washington; it has never had any bank accounts in Washington; and it is neither licensed nor registered to do business here. Id., ¶¶ 8–13. As to VWAG, the complaint alleges that VWAG: has been “engaged in the mining, processing, manufacturing, sale, and distribution of asbestos or

1 asbestos-containing products and machinery requiring or calling for the use of asbestos and
2 asbestos-containing products,” Dkt. # 1-1 at 5; and that VWAG “knew or should have known of
3 the specific medical and scientific data, literature and test results relating to the manufacture, as
4 well as to the grinding and drilling, of automobile asbestos containing brake linings and/or
5 clutch friction materials, which first began to be known or knowledgeable to defendants in the
6 1930's,” Dkt. # 1-1 at 11–12. The complaint does not allege that VWAG's products have ever
7 been present in Washington state. See generally Dkt. # 1-1.

8 Due process requires a district court to have personal jurisdiction over a defendant in
9 order to adjudicate a claim against it. Daimler AG v. Bauman, 134 S. Ct. 746, 753 (2014).
10 Plaintiffs have the burden of demonstrating that the Court may exercise personal jurisdiction
11 over VWAG. Harris Rutsky & Co. Ins. Services, Inc. v. Bell & Clements Ltd., 328 F.3d 1122,
12 1128-29 (9th Cir. 2003). Absent an evidentiary hearing, plaintiffs need only make, through the
13 submission of pleadings and affidavits, a *prima facie* showing of facts supporting personal
14 jurisdiction to avoid dismissal. Myers v. Bennett Law Offices, 238 F.3d 1068, 1071 (9th Cir.
15 2001). Provided the long-arm statute of the state in which the Court sits permits the Court's
16 exercise of personal jurisdiction,² there are two ways to establish that the Court has personal
17 jurisdiction over a particular defendant. Id. at 753-55. This order considers each in turn.

18 **A. General Jurisdiction**

19 A defendant is subject to a court's general personal jurisdiction when its contacts are “so
20 constant and pervasive as to render it essentially at home” in the forum. Daimler AG, 134 S. Ct.
21 at 751 (internal quotation and brackets omitted). General jurisdiction over a party ensures
22 personal jurisdiction over that party for any claim, regardless of that claim's relationship to the
23 forum. Id. at 761. Because VWAG is not incorporated in Washington and does not have its
24 principal place of business in Washington, and because VWAG's other contacts with

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26 ² Washington's long-arm statute, RCW 4.28.125, permits the exercise of personal jurisdiction to
27 the extent that due process allows. Shute v. Carnival Cruise Lines, 113 Wn.2d 763, 771 (1989).

1 Washington are not “so ‘continuous and systematic’ as to render it essentially at home” here, the
2 Court agrees that it lacks general personal jurisdiction over VWAG. See Daimler AG, 134 S. Ct.
3 at 760–61 (quoting Goodyear Dunlop Tires Operations, S.A. v. Brown, 564 U.S. 915, 919
4 (2011)).

5 **B. Specific Jurisdiction**

6 A defendant may also be sued in a forum where it has minimal contacts, provided those
7 contacts are purposefully directed at the forum, the claim arises out of those contacts, and the
8 exercise of jurisdiction over that party is reasonable. See Pebble Beach Co. v. Caddy, 453 F.3d
9 1151, 1155 (9th Cir. 2006).

10 Plaintiffs argue that Mr. Hodjera’s illness was caused by “exposure to asbestos and
11 asbestos-containing products that were mined, manufactured, produced, and/or placed into the
12 stream of commerce by the defendants in this case.” Dkt. # 87 at 3. To establish personal
13 jurisdiction over VWAG, plaintiffs argue that VWAG purposefully availed itself of this
14 Washington forum by selling Volkswagen vehicles in Washington state through Volkswagen
15 Group of America, Inc., a wholly-owned subsidiary. Dkt. # 87 at 8. Plaintiffs attach a plea
16 agreement from a criminal case brought by the United States against VWAG in which VWAG
17 admits to implementing business strategies to target the American market. Dkt. # 88-1 at 58.
18 For purposes of the specific jurisdiction analysis, VWAG does not contest that it “purposefully
19 availed” itself of the Washington forum. Dkt. # 96 at 2.

20 Still, plaintiffs fail to satisfy the second prong of the specific jurisdiction test: the
21 requirement that their claim arise out of the defendant’s purposeful contacts with the forum state.
22 According to the complaint, Mr. Hodjera’s asbestos exposure occurred in Toronto, Ontario. Dkt.
23 # 1-1 at 4. There is no allegation that Mr. Hodjera’s exposure would not have occurred but for
24 VWAG’s contacts with Washington. See Doe v. American Nat. Red Cross, 112 F.3d 1048,
25 1051 (9th Cir. 1997). Instead, plaintiffs allege simply that “the products defendant has sold in
26 Washington are the exact same kind of products with which plaintiff worked, causing his

1 exposure to asbestos.” Dkt. # 87 at 10. Mr. Hodjera’s history of working with “similar”
2 Volkswagen products *in Toronto* fails to establish specific jurisdiction over VWGA *in*
3 *Washington*.

4 Instead, plaintiffs argue that the fairness prong of the specific jurisdiction test should be
5 sufficient in this case: “it would be manifestly unfair to this dying plaintiff and his wife to break
6 this case up into multiple claims and require plaintiffs to start over in many different states, and
7 potentially two foreign countries.” Dkt. # 87 at 12. While the Court sympathizes with the
8 plaintiffs’ circumstances, the Constitution does not permit it to exercise jurisdiction over a
9 particular defendant merely because it would be most fair to the plaintiff. See Int’l Shoe Co. v.
10 Washington, 326 U.S. 310, 319 (1945) (“[The due process] clause does not contemplate that a
11 state may make binding a judgment in personam against an individual or corporate defendant
12 with which the state has no contacts, ties, or relations.”). All three prongs of the test must be
13 met to establish specific personal jurisdiction in keeping with due process. Accordingly,
14 plaintiffs’ claims against VWGC must be dismissed for lack of personal jurisdiction.

15 **C. Leave to Amend**

16 Plaintiffs alternatively request leave to amend their complaint. Dkt. # 87 at 12 n.6. “[A]
17 district court should grant leave to amend even if no request to amend the pleading was made,
18 unless it determines that the pleading could not possibly be cured by the allegation of other
19 facts,” Lopez v. Smith, 203 F.3d 1122, 1127 (9th Cir. 2000). To the extent plaintiffs can,
20 consistent with their Rule 11 obligations, amend their complaint to include allegations
21 remedying the deficiencies identified in this order, they may file a motion to amend and attach a
22 proposed pleading for the Court’s consideration by Friday, June 2, 2017.

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24 For all the foregoing reasons, VWAG’s motion to dismiss, Dkt. # 63, is GRANTED.
25 Plaintiffs’ claims against VWAG are dismissed without prejudice. VWAG’s motion for a
26 protective order, Dkt. # 103, VWAG’s motion to quash plaintiff’s notice of deposition, Dkt.

1 # 124, and VWGC's motion for a protective order regarding plaintiffs' second set of requests,
2 Dkt. # 132, are DENIED as moot.

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4 DATED this 17th day of May, 2017.

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6 Robert S. Lasnik

7 Robert S. Lasnik
8 United States District Judge

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